

AMENDED IN SENATE AUGUST 5, 1996

AMENDED IN SENATE JULY 9, 1996

AMENDED IN SENATE JUNE 19, 1996

AMENDED IN ASSEMBLY MAY 1, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

## ASSEMBLY BILL

**No. 350**

**Introduced by Assembly Member Bustamante**

February 10, 1995

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An act to add and repeal Article 7 (commencing with Section 2105) of Chapter 1.5 of Division 3 of the Fish and Game Code, relating to endangered species, ~~and making an appropriation therefor~~ *and threatened species*.

### LEGISLATIVE COUNSEL'S DIGEST

AB 350, as amended, Bustamante. Endangered *and threatened* species.

(1) Existing law does not provide for a recovery strategy program relating to threatened or endangered species.

This bill would require the Department of Fish and Game to develop and implement a recovery strategy pilot program until January 1, 2004. The bill would require the Fish and Game Commission to identify 5 species on either the list of threatened or endangered species for which recovery strategies are to be developed and would authorize the commission to identify one or more species added to those lists after January 1, 1995, based on specified factors. The bill would

require the department to assemble a recovery strategy team for each species identified to aid in the development of the recovery strategy for that species. The bill would require the recovery strategy to be approved by the commission at a noticed hearing. The bill would require the department to adopt rules and guidelines to implement the policies of the department in implementing the recovery strategies. The bill would require the department to report annually on the status and progress of the implementation of the recovery strategies.

~~(2) SB 1177, if enacted, would authorize the department to issue permits authorizing the taking of candidate, threatened, or endangered species under certain conditions.~~

~~This bill would incorporate that provision by reference, to become operative only if SB 1177 is enacted and becomes operative on or before January 1, 1997.~~

~~(3) Existing law requires the department to pay the costs of administration of the California Endangered Species Act from the continuously appropriated Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account in the Fish and Game Preservation Fund.~~

~~Because the bill would impose new duties on the department and the commission under that act, the bill would make an appropriation.~~

*This bill would provide that the provisions described in (1) would become operative only if funds are appropriated by the annual budget bill or another statute to fund the cost of implementing the bill and that the continuous appropriation to pay the costs of the administration of the California Endangered Species Act does not apply to any costs relating to those provisions of the bill.*

Vote: majority. Appropriation: ~~yes~~ no. Fiscal committee: yes. State-mandated local program: ~~yes~~ no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 7 (commencing with Section  
2 2105) is added to Chapter 1.5 of Division 3 of the Fish and  
3 Game Code, to read:  
4

Article 7. Recovery Strategy Pilot Program

2105. The department shall develop and implement a recovery strategy pilot program. The objectives of this pilot program are as follows:

(a) The development of recovery strategies with the goal that the regulations or other protections for species listed pursuant to this chapter are no longer necessary.

(b) Identification of efficient planning procedures.

2106. On or before January 1, 1997, the commission, based on recommendations from the department, shall identify five species that are listed as either threatened species or endangered species for which recovery strategies shall be developed and implemented. The commission may also identify one or more species for inclusion in the recovery strategy pilot program that are added, after January 1 1995, to the list of threatened species or the list of endangered species pursuant to Section 2075.5.

2106.5. In determining the species to be identified in the recovery strategy pilot program pursuant to Section 2106, the commission shall consider the following factors:

(a) The intensity and immediacy of the threat facing the species.

(b) Whether recovery strategy planning for the species would provide benefits for multiple species.

(c) The extent to which landowners and other persons affected by the regulation of the species are willing to participate in the recovery strategy planning.

(d) Whether the species is already the subject of a recovery plan prepared by the federal government.

(e) The public and private costs of achieving recovery.

(f) The need to use recovery strategy planning for different types of species under different circumstances and in different regions of the state.

2107. (a) For each species identified by the commission for the recovery strategy pilot program pursuant to Section 2106, the department shall assemble a recovery strategy team consisting of, but not limited to, department personnel, other state agency personnel if

1 found by the department to be appropriate, federal  
2 agency personnel to the extent permitted by federal law  
3 if found by the department to be appropriate,  
4 representatives of affected local governments,  
5 representatives of affected landowners, and  
6 representatives of environmental groups.

7 (b) Each recovery team shall work collaboratively to  
8 aid the department in developing the recovery strategy  
9 for that species for which the recovery team is assembled.

10 (c) The department shall consider information from  
11 all persons likely to be affected by the implementation of  
12 a recovery strategy and from persons knowledgeable in  
13 those subject areas in developing the recovery strategy  
14 for each species. For example, if the species addressed in  
15 the recovery strategy exist on land used for agriculture or  
16 if agricultural practices affect the species, the  
17 department shall consult with the county agricultural  
18 commissioner where the land is located and other  
19 agricultural experts to ensure that the recovery strategy,  
20 to the extent possible, will permit routine agricultural  
21 activities to be carried out with as little direct regulatory  
22 control as possible.

23 2109. (a) After identification of the five species to be  
24 included in the recovery strategy pilot program pursuant  
25 to Section 2105, the department shall promptly  
26 commence preparation of a recovery strategy for each of  
27 those species.

28 (b) Within 12 months of the identification of a species  
29 included in the recovery strategy pilot program, the  
30 department shall submit a recovery strategy for that  
31 species to the commission for review and approval.

32 (c) A recovery strategy for a species shall contain all of  
33 the following information:

34 (1) A statement of scientific knowledge and  
35 assumptions regarding the biology, habitat requirements,  
36 and threats to the existence of the species.

37 (2) A statement of interim and long-term recovery  
38 goals. The interim goals shall be specifically stated. The  
39 long-term goals may be specifically stated if the  
40 department determines that adequate information exists

1 to reasonably identify long-term goals; if not, the strategy  
2 may contain general long-term goals that will be clarified  
3 as the recovery strategy is updated pursuant to paragraph  
4 (7).

5 (3) A description of the conservation and  
6 management activities that may be necessary to achieve  
7 the interim and long-term recovery goals. The  
8 department shall consider a range of alternative  
9 conservation and management activities and shall report  
10 why it prefers the activities it recommends.

11 (4) An estimate of the time and costs required to meet  
12 the interim recovery goals for the species, including  
13 available or anticipated funding sources, and an initial  
14 projection of the time and costs associated with meeting  
15 final recovery goals. These costs shall include direct and  
16 indirect costs and public and private costs.

17 (5) A description of actions and recommendations,  
18 including deregulation incentives and objectives, that  
19 will be needed to minimize the adverse social and  
20 economic impacts of implementation of the recovery  
21 strategy and a discussion of the range of recovery  
22 alternatives considered in the strategy.

23 (6) A description of the following elements necessary  
24 to achieve the goals of the recovery strategy:

25 (A) The use of public lands for the conservation,  
26 protection, restoration, and enhancement of the species.

27 (B) Methods of private and public cooperation.

28 (C) Procedures and programs for notice, education,  
29 and research.

30 (7) The expected time necessary to meet the interim  
31 recovery goals and provisions and triggers for review and  
32 amendment of the strategy. If final recovery goals are not  
33 specifically stated, the strategy shall contain a timetable  
34 for an update of the plan to clarify the long-term goals.

35 (8) Objective measurable criteria by which to  
36 determine whether the goals and objectives of the  
37 recovery strategy are being met and procedures for  
38 recognition of successful recovery and downlisting or  
39 delisting.

40 (9) An implementation schedule.

1 2110. If the department determines, based on the best  
2 scientific evidence available, that the recovery strategy  
3 should also contain specifications regarding allowable  
4 taking of the species and guidelines for consultation, the  
5 recommended recovery strategy shall also contain  
6 general policies to guide the department's issuance of  
7 memoranda of understanding pursuant to Section 2081,  
8 permits pursuant to Section 2081.4, and the department's  
9 consultation procedures to be followed pursuant to  
10 Section 2090. The general policies shall be consistent with  
11 the recommended recovery strategy.

12 2111. After the department submits the recovery  
13 strategy to the commission, the commission shall hold a  
14 public hearing to consider approval of the recovery  
15 strategy. The commission shall approve the recovery  
16 strategy if, considering all relevant evidence, the  
17 commission finds that the recovery strategy meets all of  
18 the following criteria:

19 (a) The recovery strategy would conserve, protect,  
20 restore, and enhance the species.

21 (b) The recovery strategy and implementation  
22 schedule are capable of being carried out in a  
23 scientifically, technologically, and economically  
24 reasonable manner.

25 (c) The recovery strategy is supported by the best  
26 available scientific data.

27 (d) The recovery strategy represents an equitable  
28 apportionment of both public and private and regulatory  
29 and nonregulatory obligations.

30 2111.5. If the commission does not adopt the recovery  
31 strategy pursuant to Section 2111 because it could not  
32 make all of the necessary findings, it shall specify why the  
33 required finding could not be made. If the commission  
34 determines that the strategy could be amended to  
35 address the issues identified by the commission, it may  
36 direct the department to revise the recovery strategy  
37 within six months and resubmit it to the commission.

38 2112. If a recovery strategy for one of the species  
39 identified pursuant to Section 2106 includes policies to  
40 guide the department's issuance of memoranda of



1 understanding pursuant to Section 2081, permits  
2 pursuant to Section 2081.4, and the department's  
3 consultation procedures pursuant to Section 2090, the  
4 department shall develop and adopt rules and guidelines  
5 to implement those policies. The rules and guidelines  
6 shall be based upon the best available scientific evidence  
7 and shall be consistent with the recovery strategy  
8 adopted. The rules and guidelines may clearly specify  
9 conditions and circumstances under which the taking of  
10 a species listed as a threatened species or endangered  
11 species would not require a permit pursuant to Section  
12 2081.4 or a memorandum of understanding pursuant to  
13 Section 2081.

14 2113. After approval of a recovery strategy by the  
15 commission, the department shall consult with the  
16 recovery strategy team assembled for that species  
17 pursuant to Section 2107 and report to the commission on  
18 an annual basis on the status and progress of the  
19 implementation of the recovery strategy. The strategy  
20 shall be the basis for the species reviews pursuant to  
21 Section 2077.

22 2114. If the commission elects to authorize the  
23 preparation of a recovery strategy prior to or in  
24 conjunction with a decision to add a species to a list  
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1 *Section 2098 does not apply to any costs relating to this*  
2 *article.*

3 2116. This article shall remain in effect only until  
4 January 1, 2004, and as of that date is repealed, unless a  
5 later enacted statute, which is enacted before January 1,  
6 2004, deletes or extends that date.

7 ~~SEC. 2. Section 2110 is added to the Fish and Game~~  
8 ~~Code, to read:~~

9 2110. ~~If the department determines, based on the best~~  
10 ~~scientific evidence available, that the recovery strategy~~  
11 ~~should also contain specifications regarding allowable~~  
12 ~~taking of the species and guidelines for consultation, the~~  
13 ~~recommended recovery strategy shall also contain~~  
14 ~~general policies to guide the department's issuance of~~  
15 ~~memoranda of understanding pursuant to Section 2081~~  
16 ~~and the department's consultation procedures to be~~  
17 ~~followed pursuant to Section 2090. The general policies~~  
18 ~~shall be consistent with the recommended recovery~~  
19 ~~strategy.~~

20 ~~SEC. 3. Section 2112 is added to the Fish and Game~~  
21 ~~Code, to read:~~

22 2112. ~~If a recovery strategy for one of the species~~  
23 ~~identified pursuant to Section 2106 includes policies to~~  
24 ~~guide the department's issuance of memoranda of~~  
25 ~~understanding pursuant to Section 2081 and the~~  
26 ~~department's consultation procedures pursuant to~~  
27 ~~Section 2090, the department shall develop and adopt~~  
28 ~~rules and guidelines to implement those policies. The~~  
29 ~~rules and guidelines shall be based upon the best available~~  
30 ~~scientific evidence and shall be consistent with the~~  
31 ~~recovery strategy adopted. The rules and guidelines may~~  
32 ~~clearly specify conditions and circumstances under which~~  
33 ~~the taking of a species listed as a threatened species or~~  
34 ~~endangered species would not require a memorandum of~~  
35 ~~understanding pursuant to Section 2081.~~

36 ~~SEC. 4. Sections 2110 and 2112 of the Fish and Game~~  
37 ~~Code, as added by Section 1 of this bill, shall become~~  
38 ~~operative only if Senate Bill 1177 is enacted, adds Section~~  
39 ~~2081.4 to the Fish and Game Code, and becomes~~  
40 ~~operative on or before January 1, 1997, in which case~~



1 ~~Sections 2 and 3 of this bill shall not become operative. If~~  
2 ~~Senate Bill 1177 is not enacted, does not add Section~~  
3 ~~2081.4 to the Fish and Game Code, or does not become~~  
4 ~~operative on or before January 1, 1997, Sections 2110 and~~  
5 ~~2112 of the Fish and Game Code, as added by Section 1 of~~  
6 ~~this bill, shall not become operative, and Sections 2 and~~  
7 ~~3 of this bill shall become operative.~~

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